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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 16TH DAY OF JUNE 1998

BEFORE

THE HON'BLE MR.JUSTICE MOHAMED ANWAR

WRIT PETITION NO.28723/1997
c/w. 28724/97.

BETWEEN :

K.V.Hanumanthappa Naik,
s/o.Udigerappa Naik,
Major,
R/o.Kedigere Village,
Herenellur Hobli,
Kadur Taluk,
Chickmagalur District,
by his G.P.A.Holder
Sri K.V.Ramappa Naik, Major,
s/o.Udigerappa Naik. PETITIONER
Common in both.

(By Sri B.Veerabhadrappa, Adv.,)

AND :

1.State of Karnataka,
Represented by the Secretary to
Government, Revenue Department,
Vidhana Soudha,
Bangalore-1.

2.Deputy Commissioner,
Chickmagalur Sub-Division,
Chickmagalur.

3.Asst.Commissioner,
Tarikere Taluk,
Chickmagalur District.
(R1 to R3 common in both)

4. Govindappa,
s/o.Hanumappa,
Basuru Grama,
Kadur Taluk,
Chickmagalur. (R4 in W.P.28723/97)

4. Mallappa,
s/o.Sanjeevappa,
Besur village,
Hirenallur Hobli,
Kadur Taluk,
Chicmangalur Dist.'' (R4 in W.P.28724/97)

(By Sri Siddagangaiah, HCGP for
R1 to R3 Sri N.S.Venugopal for R4)

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This writ petition filed praying to quash vide Annexure 'C' dated 30.12.1996 by R3 and Annexure'D' dated 12.8.1997 by R2.

The writ petition is coming on for hearing this day, the court made the following

JUDGMENT

Heard the arguments of Learned Counsel for both parties.

2.Certain undisputed facts are that the Government land in Sy.No.116, measuring 5 acres of Basuru Village, Hirenellur Hobli, Kadur Taluk, Chickmagalur District was granted by the competant Revenue authority to one Hanumappa on 1.6.60 under Dharkhast. The grantee was the member of Scheduled Caste. Respondent No.4 is his son. Annexure 'A' is the Saguvali Chit i.e., Grant Certificate

dated 26.10.1960, in respect of the said grant. The said land was granted to Hanumappa, since deceased, with a condition that the same shall not be alienated for a period of 15 years from the date of grant. On 11.6.1973 Hanumappa sold the said land to the petitioner under the Registered Sale Deed and the latter was put in possession and cultivation thereof. Thereafter, the grantee died. After the KARNATAKA SCHEDULED CASTES AND SCHEDULED TRIBES (PROHIBITION OF TRANSFER OF CERTAIN LANDS) ACT 1978 ('the Act' for short) came into force with effect from 1.1.1979, grantee's son R4 Govindappa herein made an application under Section 5 of the Act before Respondent No.3-Assistant Commissioner seeking resumption of the said land on the ground that it was purchased by the petitioner before expiry of the prohibited period of 15 years, in violation of the said condition and therefore the said sale was null and void.

3.On enquiry,R-3 held the said sale transactionin null and void, since it was alienated by the grantee to the purchaser

within the prohibited period of 15 years. Therefore, R-3 passed the order dated 30.12.1996 produced as Annexure'C' holding the said transfer of the land null and void and directing petitioner's eviction therefrom its restoration there are to the applicant (R-4). The said order at Annexure'C' was challenged by the petitioner in appeal before Respondent No.2 Deputy Commissioner. Petitioner's appeal before him came to be dismissed by order dated 12.8.1997. Annexure'D' is the copy of the said order.

4. Petitioner has prayed the petition herein to quash both the impugned orders i.e., Annexure 'C' & 'D', on the grounds that under the grant Rules then in force, the condition prohibiting alienation of the land imposed on the grant was illegal and without jurisdiction.

5.Learned Counsel for petitioner argued against the orders at Annexure 'C' & 'D' urging the aforesaid ground. Support for

this submission was drawn by him from the decision of this court, in the case of BHOOMIREDDY VS.STATE OF KARNATAKA AND OTHERS reported in 1991(2) K.L.J. 449 and G.N.VEMAREDDY VS. STATE OF KARNATAKA AND OTHERS reported in 1997(1) K.L.J.318.

6.The submission of petitioner's counsel was that as borne out by the Grant Certificate Annexure 'A', the said land was granted to the grantee Hanumappa by the Government for upset price at Rs.55/- per acre. Thereefore, he argued that the term 'upset price' as defined by Sub-Rule(3) of Rule 43 of the Mysore Land Revenue (Amendment) Rules 1960 ('the Rules' for short) represents the actual market value and when once the land was shown to have been granted for an upset price it legally follows that the land was sold to the grantee for its prevailing market value; and in that view of the position, the relevant provision contained in 43-G(4) providing for imposition of the non-alienation condition on a grant for any period will not be applicable.

7. Learned H.C.G.P. representing the respondents 1 to 3 repelling the contention of petitioner's counsel argued otherwise in support of the validity of both the impugned orders. Reliance was sought to placed by him on a decision of this court in BASAPPA VS.THE SPECIAL DEPUTY COMMISSIONER, CHITRADURGA DISTRICT AND OTHERS reported in 1991(2) K.L.J.480.

8. To appreciate rival contentions putforward by both sides it is necessary to advert to the relevant provision contained in sub-Rule(4) of Rule 43-G and the method of fixing the upset price as provided in Rule 43(3). Rule 43-G(4) reads:-

"43-G GRANT OF LANDS UNDER THE PROCEEDING RULES SHALL BE SUBJECT TO THE FOLLOWING CONDITIONS;-

(1).....

(2).....

(3).....

(4) Where the grant is made free of cost, or

is made at a price which is less than the full market value, the grant shall be subject to the condition that the land shall not be alienated for a period of fifteen years from the date of the grantee taking possession of the land, after the grant.

Provided that....."

Rule 43(3) which deals with the method of fixing the upset price runs:-

"43(3) The "Upset Price" shall not be arbitrarily fixed but shall represent the actual market value of the land as nearly as it can be ascertained by local enquiries and by the examination of records of sales or similar lands in the neighbourhood, and if necessary of the registration statistics relating to them."

9.In G.N.VEMAREDDY .VS. STATE OF KARNATAKA (SUPRA), dealing with the ambit and scope of Rule 43(3) has been dealth with.Rule 43(3) appears to have been shown therein as Rule

43(2) due to topographical error. However, dealing with this material provision this court has expounded the proposition thus: In view of mandate of sub-rule(2) of Rule 43 its is not possible to infer and take the view of upset price fixed at Rs.50 is the market value. The authorities which are required to discharge the statutory duties.

10.The single Bench of this court in Basappa vs. The Special Deputy Commisioner decided on 27.3.1991 while dealing with this scope of Rule 43(G)(4) has held:-

'When the land is granted at an upset price the question of missing restriction on the land does not arise, because the grant of land for upset price amounts to sale of the land.'

11.In the case of Basappa(supra), Single Bench of this court referring to the dictionary meaning of the term ofthe 'market value' observed :

" The authority that granted the land in question in favour of respondent-3 and imposed a sum of Rs.50/- per acre as upset price did not make an attempt to ascertain its market value as nearly as it can be ascertained as provided under sub-rule (2) of Rule 43 of the Rules, because, if it did so, the upset price imposed in the case on hand would have been more than what has been levied and in such a case, there would not have been the prohibitory condition that the land shall not be alienated for a period of fiteen years. Secondly, if the competent authority had seen the situation,fertility and potential power of the land, the upset price would have been different. Unfortunately, saguvali chit or other records are silent about the view taken by the granting authority on this aspect. Therefore, the only presumption that can be drawn is that what is levied and collected is only a nominal sum and not the actual market value; therefore, the condition that the grantee shall not alienate the land for a period of 15 years is rightly attached to the grant."(Para 30)

I am of the considered opinion that the legal proposition laid down in the case of G.N.VEMAREDDY VS. STATE OF KARNATAKA as also in BHOOMIREDDY VS. STATE OF KARNATAKA is entitled to be followed. Because these two authorities find full accord with the legal import and tenor of the method of fixing the upset price laid down in sub-Rule(3) of Rule 43 and with the scope of applicability of the non-alienation clause (4) of Rule 43G.

12.A plain reading of Rule 43(G)(4) makes it abundantly clear that it comes into play only in the cases of the grant of the land made to a member of Scheduled Caste and Scheduled Tribe when the grant is free of cost or when it is made at a price which is less than the full market value. It is not in dispute in the case on hand that the land in question was not granted to the grantee Hanumappa free of cost. It is an undisputed fact as disclosed by the endorsment of the government made at the tope of the Grant certificate Annexure'A' that the grant was made to the grantee for the

upset price at Rs.55/- per acre and an amount of Rs.200/- out of the total value of the land at the said rate had been waived by the Deputy Commissioner by virtue of the powers conferred by Rule 43G(1). It is held in Bhoomireddy's case that waiver of any portion of the upset price by the Government under Rule 43G(1) is not and cannot be treated as reduction in the market value of the granted land. As has been observed by this court in its recent decision in G.N.VEMAREDDY's case. The authorities who are excepted to have been discharged duties in terms of the mandate of the liability. Going by this yardstick of import of a statutory provision, it necessarily follows that the 'upset price' of the land mentioned in any land grant certificate represents the actual prevailing market value of the land in the light of Rule 43 G(3). In the case of Basappa (supra) the statutory import and of fixation of upset price was not directly addressed, discussed and interpretted. Therefore, the contention of the Learned H.C.G.P. that regard being had to the price collected from the grantee at Rs.55/- per acre,it has to be

presumed that this amount is less than the market value, although it is clearly stated in Annexure 'A' Grant Certificate that it was for the upset price which the land was granted to the grantee, does not find favour with me in the light of the law laid down in other two decisions of this court in Bhoomireddy Vs.State of Karnataka and others and G.N.Vemareddy vs.State of Karnataka both cited supra.

13.Therefore, it has to be held that the granted land was sold to the grantee Hanumappa for an upset price which was the market value of the land prevailing at the time of the grant. When once the land is found to have been sold to the grantee for the market value Rule 43 G (4) will not be attracted and any condition imposed on the grant prohibiting the alienation of the land for the particular period by the granting authority is without jurisdiction. So, the condition attached to the granted land prohibiting its alienation for 15 years is an invalid and unenforceable

condition. In that view of the legal position the transfer of the land made by the grantee to the petitioner under the sale deed dated 11.6.1973 is a valid transfer in law and the same cannot be declared null and void. Therefore, the impugned orders of Respondents 2 and 3 are unsustainable in law.

14. Learned High Court Govt. Pleader nextly submitted that wen once it is found thatthe proposition laid down in Basappa"s case is at variance with the proposition enunciated in the cases of Booma Reddy v. Beema Reddy cited supra, it is proper that they be referred to a larger Bench to resolve the conflict on the point if the upset price stated in the grant certificate be treated as market value or less than the market value. Where there are two decisions of a Single Bench conflicting on a point of law, two courses are left open to a court. Regard being had to the facts and circumstances of the case as also the reasoning assigned in support of a particular rule if the court is of the opinion that the ruling or proposition

in any of such decisions is acceptable to it and should be applied to the case in hand it may do so. Or else it may also choose to refer the point for decision of a larger Bench thereby resolving the conflict created by the divergent rulings laid down by the decisions. In the instant case the court is of considered opinion that the former approach is just and proper.

For the reasons aforesaid, the petition is allowed. The impugned orders at Annexures 'C' & 'D' of Respondents 1 and 2 are quashed.

Sd/-
JUDGE

'CP.